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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,020	03/15/2004	Magnus Hallback	P04,0023	1014

26574 7590 02/24/2006

SCHIFF HARDIN, LLP
PATENT DEPARTMENT
6600 SEARS TOWER
CHICAGO, IL 60606-6473

EXAMINER

ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 18 of U.S. Patent No. US Patent No. 6,761,166 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant’ apparatus claim 7 reads on claims 1 and 18 of the published patent. Claim 7 limitations “aspiration tubing “ reads on “a first tube”, “an extraction unit” reads on “suction unit”, and “a regulating unit” reads on “control unit” of claims 1 and 18. Method claims are also considered obvious over claims 1 and 18.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.



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3. Examiner has done a through search and indicated as many patents/pending applications that are subject to Double Patenting rejections. However due to the time limit given to examine each application, the Examiner might have overlooked other pending applications or patents that would be considered for Double Patenting rejection. Therefore, the applicant is requested to inform the Examiner to such corresponding pending application(s) and/or Patent(s) and file Terminal Disclaimer accordantly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shumaya B. Ali
Examiner
Art Unit 3743

Henry Bennett
Supervisory Patent Examiner
Group 3700